IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 23RD NOVEMBER 2007 / 2ND AGRAHAYANA 1929

WP(C).No. 28637 of 2007(H)

PETITIONER:

KERALA SELF FINANCING ENGINEERING COLLEGE MANAGEMENTS ASSOCIATION, REPRESENTED BY ITS SECRETARY, S.C.M.S. CAMPUS, MUTTOM, ALUVA.

BY ADV. SRI.KURIAN GEORGE KANNAMTHANAM (SR.)

RESPONDENT:

THE M.G. UNIVERSITY, REPRESENTED BY ITS REGISTRAR, PRIYADARSHINI HILLS, KOTTAYAM.

BY SRI.T.A.SHAJI, SC, MG UNIVERSITY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/11/2007, THE COURT ON 23/11/2007 DELIVERED THE FOLLOWING:

WPC NO.28637/07

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: COPY OF LIST OF MEMBER OF COLLEGES UNDER THE M.G.UNIVERSITY.

EXT.P2: COPY OF JUDGMENT DATED 24.9.2003 IN WPC NO.29954 OF 2003 OF THIS HON'BLE COURT.

EXT.P3: COPY OF SHOW CAUSE NOTICE DATED 16.7.07 ISSUED BY THE RESPONDENT.

EXT.P4: COPY OF LETTER DATED 25.8.07 ISSUED FROM -DO-.

EXT.P5: COPY OF ORDER DATED 6.11.2006 OF THE ACADEMIC A.VII SECTION.

EXHIBITS OF RESPONDENT

ANNEXURE 1: TRUE COPY OF THE ORDER U.O.NO.AC.AVII/1/2613/2006 DATED 28.9.2006 ISSUED BY THE UNIVERSITY.

TRUE COPY

ANTONY DOMINIC, J.

= = = = = = = = = = = = = = =
W.P.(C) No. 28637 OF 2007 H
= = = = = = = = = = = = = = =

Dated this the 23rd day of November, 2007

J U D G M E N T

The main prayers in this writ petition filed by the Kerala Self Finance Engineering College Managements Association is to quash Ext.P3 and other similar communications issued to their members, in so far as it insists on compliance with Clause 1, 5 and 6 therein. Petitioner also seeks a direction to the respondent not to insist upon any bonds as stated in Ext.P3 for considering the request of their members for grant/ extension/renewal of affiliation. Ext.P4 is the communication issued by the respondent University to one of the members of the petitioner directing them to furnish documents/details as stipulated in the said communication and in so far as this writ petition is concerned, Clause 1, 5 and 6 being relevant are extracted below for reference.

> 1. The undertaking by the educational agency as stipulated in Serial No.4 of the University Order dated 6.11.06.
>
> 5. Copy of the bond executed by the Management

> and teaching staff showing that the teachers would continue in the college during the entire academic year.
>
> 6. An Undertaking on stamped paper worth Rs.50/- to the effect that the Management shall abide by the rules and regulations framed by the University/Government from time to time.

2. By Ext.P4 the University had called upon the members of the petitioner to produce these documents for considering their request for extension of affiliation for the year 2006-07. Petitioner submits that the requirement as stipulated by the University in Clause 1, 5 and 6 extracted above are illegal.

3. Clause 1 of Ext.P4 shows that the University has required the members of the petitioner to furnish an undertaking by the Educational Agency as stipulated of the University order dated 6/11/06. The University order dated 6/11/06 referred to above is Ext.P5 in this writ petition and in so far as this case is concerned, Clause 4 of Ext.P5 alone is relevant and is extracted below for reference.

> The educational agency shall submit an undertaking to the effect that it shall abide by the rules and regulations, orders and instructions issued from time to time by the University/ State Government/ Central Government and the Accrediting Agencies regarding the admission of students to the course.

4. On a perusal of clause 1 of Ext.P4 and clause 4 of Ext.P5, it can be seen that an undertaking is sought to be obtained to the effect that the members of the petitioner shall abide by the rules and regulations, orders and instructions issued from time to time by University/ State Government/ Central Government and the Accredited Agencies regarding admission of students to the courses. A comparison of this with clause 6 of Ext.P4 would show that what the university demands by Clause 6 is almost a similar undertaking. Therefore, the correctness of Clause 1 and 6 of Ext.P4 can be examined together.

5. There is no controversy that in the past also University had demanded a similar undertaking from the members of the petitioner and such a communication came to be challenged in this court in WP(C) No.29954/03. That writ petition was disposed of by Ext.P2 judgment dated 24th September, 2003, wherein this court granted relief in the following terms:

> The petitioner is accordingly given freedom to make a rider to the bond suggested by the University by adding that the orders of the Government or, the University or the Central Regulatory Bodies as modified or confirmed by any court in India on specific contest by the petitioner.

6. On the previous occasion, this court having permitted the members of the petitioner to incorporate a rider in the above terms, the grievance of the petitioner in so far as Clause 1 and 6 of Ext.P4 can also be redressed by permitting the members of the petitioner to incorporate a rider in the same terms as allowed in the judgment in W.P.(C)No. 29954/03 on this occasion also.

7. What remains is the challenge to Clause 5 of Ext.P4. By this clause, the members of the petitioner and the teaching staff are required to execute a bond to the effect that the teachers would continue in the College during the entire academic year. It is the specific contention of the petitioner that there is no enabling provision in the University Act or the Statute permitting the University to require production of a bond as demanded in Clause 5 of Ext.P4. Petitioner would also contend that the teachers who are to give the bond are also unwilling to do so, as it will restrict their right to seek better avenues of employment. It is also contended that compliance with Clause 5 of Ext.P4 would also go against the conditions of service of the teachers which permits them to leave employment on giving specified period of notice and that it will adversely

affect the Managements right to take even disciplinary action against erring teaching staff.

8. While these contentions are raised forcibly by the counsel for the petitioner, in the statement filed by the counsel for the University and in particular para 11 thereof, they seem to take the stand that a clause similar to what is provided for in Clause 5 of Ext.P4 is required for maintaining quality education to the student community and ensure the availability of well qualified teaching faculty. It is stated that the clause was insisted in the wake of complaints received from the students, parents, teachers and public regarding the irregular admissions, shortage of infrastructure facilities, failure to provide experienced and qualified teachers etc. However, the statement do not disclose the materials the materials on the basis of which these contentions are raised.

9. A perusal of the statement filed on behalf of the University would show that despite a specific contention raised by the petitioner, the University is not in a position to refer to any provision in the University Act or the Statutes to support the insistance on a bond as provided in Clause 5 of Ext.P4. Thus, I

take that, even according to the University, there is no statutory provision, which supports Clause 5. If that be so, in the absence of any statutory support,the University is not justified in insisting upon production of a bond by the members of the petitioner and their teaching staff. I also find force in the contention of the petitioner that the insistence of the bond as demanded in Clause 5 of Ext.P4 could also place fetter on the right of the teaching community and will also adversely affect the right of the management to take even disciplinary action.

10. Accordingly, Clause 5 of Ext.P4 would stand quashed. There will be a direction to the University to permit the members of the petitioner to comply with Clause 1 and 6 of Ext.P4, subject to the rider mentioned above and without insisting on Clause 5.

Writ petition will stand allowed in the above terms.

ANTONY DOMINIC
JUDGE

Rp/-